N))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 675 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRANJIVANDAS KHUSHALDAS

Versus

DHANABEN WD/O DEVCHAND

Appearance:

MR MC SHAH for Petitioner

MS VASUBEN P SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/11/2000

ORAL JUDGEMENT

#. This is landlord's revision under sec.29(2) of the Bombay Rent Act against the concurrent judgments and decrees of the trial Court as well as the appellate Court.

#. The brief facts giving rise to this revision are as under :-

The revisionist/landlord filed a suit for eviction against Devchandbhai Jamnadas, who died during pendency of the suit. Suit for eviction and recovery of arrears of rent, etc. was filed on variety of grounds. One ground seeking eviction was that the tenant was in arrears of rent for morethan six months, which he failed to pay within a month of service of notice of demand. The second was that the demised premises was reasonably and bonafidely required by the landlord for his personal use and occupation. The third was that the defendant committed breach of terms of tenancy and acted contrary to the provisions of sec.108(o) of the Transfer of Property Act. During pendency of the suit, the plaint was got amended and additional ground of eviction was introduced, namely, the tenant, after coming into force of the Act, had built or acquired vacant possession of suitable residence.

#. The suit was resisted by the legal representatives of the deceased defendant, denying all these allegations. Dispute of standard rent was also raised, so also the plea of non-joinder of necessary parties.

#. The trial Court negatived the landlord's case that the tenant was in arrears of rent for more than six months, which he failed to pay within a month of service of notice of demand. The trial Court further negatived the landlord's plea that the disputed premises was required by him for his personal use and occupation. The trial Court further found that the tenant did not commit any act contrary to sec.108(o) of the Transfer of Property Act. It further found that the tenants had not acquired alternative suitable accommodation for their residence. Standard rent was fixed at Rs.35=00 per month. Plea of non-joinder raised by the defendants was negatived. With these findings, the suit was dismissed.

#. Feeling aggrieved, the landlord preferred appeal, which too was dismissed. Hence, this revision.

#. Learned counsel for the revisionist and learned counsel for the respondents have been heard. The two judgments have been examined. The contention of Ms. Kalpana J. Brahmbhatt for the respondent has been that it is a case of concurrent finding of fact recorded by the two courts below, which is neither illegal nor perverse, hence interference in revision is not called for. She also argued that it is not proved that the tenants have shifted to the alternative accommodation,

nor it is proved that all the tenants, after the demise of the tenant-in-chief, have built accommodation for their residence. In view of this, it was argued that the revision is liable to be dismissed.

#. Learned counsel for the revisionist, on the other hand, has drawn my attention to the finding of the trial Court on Issue No.6(a) and also finding of the appellate Court on this issue. He has, however, not challenged the findings of the two courts below regarding other issues. Consequently, the only point for determination in this revision is, whether concurrent findings of the two courts below on Issue no.6(a) require any interference or not ? It is incorrect to say that, in every case, where there is a concurrent finding recorded by the two courts below, revisional interference is absolutely barred. If it is found that, the findings in the nature of concurrent findings have been illegally recorded or such findings are perverse, in that case, revisional interference is called for.

#. The requirement of sec.13(1)(l) is that, the landlord shall be entitle to recover possession of any premises if the Court is satisfied that the tenant, after coming into operation of this Act, has built or acquired vacant possession of or has been allotted a suitable residence. It is under this ground that eviction of the tenants was sought by seeking amendment in the plaint. It may be mentioned that this ground was not there in the plaint initially. It is only when the landlord came to know that the tenant has constructed alternative accommodation that this plea was raised in the plaint. Shri MB Parikh for the revisionist has, however, contended that the tenants have not only built alternative accommodation suitable for their residence but have also shifted in that accommodation. However, there was no evidence that the tenants have shifted in that accommodation and that finding was recorded by the trial Court, which was confirmed by the appellate Court. Shifting to the alternative accommodation is not the requirement of sec.13(1)(l) of the Act. There are three situations contemplated under this section. One is that the tenant is rendered liable for eviction if he has built a suitable accommodation. The second is that the tenant acquires vacant possession of a suitable residence. The third is that he has been allotted a suitable residence. The requirement of possession is only in the second category when the tenant actually acquires vacant possession of a suitable residence. Acquisition of possession is not necessary when the tenant has built an accommodation for himself or for herself. Likewise, if

an alternative accommodation has been allotted for the residence of the tenant then also, it is not the requirement of the law that the tenant must have shifted to the alternative accommodation, so allotted to him or to her. In this case, the trial Court has recorded categorical finding that it is an admitted fact that the defendant no.1(a) Dhanuben purchased land in Wadi of Ichchha Doshi and had built a building, consisting of three floors, namely ground floor, first floor and second floor. The plan of the building was also filed vide ex.81. If a three storeyed building was constructed and nowhere it was alleged by the tenants that the accommodation in this three storeyed building was not sufficient for accommodating the tenants after demise of the tenant-in-chief, it can not be said that the claim of the landlord was liable to be rejected. The trial Court, as well as, the appellate Court have rejected the claim of the landlord mainly on two grounds. The first is that all the tenants have not built suitable accommodation for their residence. It may be mentioned that the tenant-in-chief was Devchandbhai and, Dhanuben is his widow. After the death of Devchandbhai, during the pendency of the suit, eight legal representatives inherited tenancy rights as has been found by the two courts below. If these persons become tenants in common or joint tenants, it is not the requirement of the law that all the tenants should have built accommodation for their residence. On the other hand, if any one of the tenants builds a suitable accommodation to accommodate all the tenants, that is sufficient for the landlord for getting a decree for eviction. Unnecessary time and energy has been wasted by the appellate Court in examining as to who has constructed the house and what was the fund raised for the purpose and who contributed to the fund for completion of the house. Consequently, this ground is not sustainable that all the tenants in common or joint tenants should have built their own houses separately. There is no whisper from the tenants that the accommodation in three storeyed building is insufficient to accommodate the eight legal representatives of the deceased tenant. If that is so then, it can be said that that accommodation constructed by Dhanuben is sufficient for the residence of all the tenants in common or joint tenants.

#. As such, this could not be a ground for the two courts below to reject the claim of the landlord. Rejection of the claim of the landlord on this ground by the two courts below can be said to be illegal; hence, interference in this revision is called for.

##. The next ground taken by the trial Court is that the building is not complete and there is no evidence to prove that the building constructed by Dhanuben is complete. This is also a perverse finding. Three storeyed building has been completed in all respect. Electric wiring is also done. What was in the mind of the two courts below was that, because the drainage work was not complete, the building can not be said to be complete building fit for occupation or residence. At this stage, it may be relevant to point out that the suit was filed in the year 1976 (i.e. on 23-8-1976). It was dismissed on 19-3-1982. Appeal was dismissed on 30-9-1986. It is, therefore, difficult to believe even in the absence of positive evidence that the drainage could not have been completed during this long interval. Except incompletion of drainage work, nothing has been proved that the building is otherwise incomplete or unfit for occupation. Moreover, as pointed out earlier, it is not the requirement of law that the tenant, after raising a building, should necessarily shift to the alternative accommodation of the building constructed by him or her. The two courts below have also placed much emphasis upon the fact that certificate of completion and permission to occupy was not granted by the Local Authority and as such, the building can not be said to be incomplete. This is totally illegal finding. The tenant, by postponing completion of drainage work and by failing to obtain completion certificate and permission to occupy, can not defeat the claim of the landlord. The perversity in the finding of the trial Court is exhibited from its observation "it is possible that the defendants might have deliberately kept building incomplete." If this was the observation of the trial Court then it should have held that deliberate act of the tenants disentitled them to defeat the claim of the landlord. The trial Court further observed "however it appears that the defendant no.1(A) Dhanuben has deliberately kept the building incomplete. Perhaps apprehending this litigation, which is pending." This also shows that it was deliberate act of Dhanuben not to complete the drainage work in order to defeat the claim of the landlord in view of pending litigation for eviction. Moreover, it can not be believed even in the absence of positive evidence that during a period of more than a decade drainage work could not have been completed. It is not said that the building is otherwise unfit for human dwelling. Consequently, on this ground also the two courts committed patent illegality and returned perverse finding, which require interference in this revision.

##. The appellate Court has unnecessarily wasted time

and energy to make the judgment lengthy by discussing as to who is the owner of the newly build house and that it is possible that Dhanuben might not permit the other tenants to occupy the house. That is also not the ground for dismissing the suit for eviction. For the reasons stated earlier, even if one of the tenants raised alternative accommodation, which is sufficient for accommodating all the tenants then, decree for eviction can be passed under sec.13(1)(l) of the Act.

##. In view of the aforesaid discussions, I find that the findings of the two courts below are perverse, as well as, illegal, hence, the revision has to be allowed. The revision is accordingly allowed. The judgments and decrees of the two courts below are set-aside in so far as decree for eviction has been refused. Decree fixing standard rent which has been confirmed by the appellate Court is maintained.

##. The suit of the revisionist for eviction of the respondent is hereby decreed with cost throughout. The revisionist shall get arrears of rent as awarded by the two courts below and also pendente lite and future mesne profit at the rate of Rs.35=00 per month on payment of additional court fee in the execution side. The respondents are given four months time to vacate and handover vacant possession of the disputed accommodation to the landlord revisionist.

November 24, 2000. [D.C. Srivastava, J.]

/sakkaf